



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served December 5, 2008 by fax.. The landlord also sought a Monetary Order for the unpaid rent, NSF fee and filing fee for this proceeding and authorization to retain the security deposit in set off.

As a preliminary matter, the tenant stated that he had not received the Notice to End Tenancy. However, as the landlord gave evidence that he had sent to the notice to a fax number provided by the tenant, I find that the landlord has met the requirement for service set out at section 88(h) of the Act and the notice is deemed to have been served.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and the effective date, and whether a Monetary Order is due, the amount, and whether the security deposit may be retained in set off.

Background and Evidence

This tenancy began June 1, 2008 under a fixed term agreement set to end on May 31, 2009. Rent is \$2,000 per month and the landlord holds a security deposit of \$1,000 paid on June 1, 2008.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for December 2008 and had an arrears from November of \$500.

At the time of the hearing, the January rent remained unpaid although the tenant claimed that he had dropped off a cheque for the arrears and the February rent the day before. However, the landlord gave evidence that the cheque had been written on a U.S. bank account which his bank had been unable to process in the past. Therefore, at present, I must find that the rent remains unpaid.

Analysis

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenant has not paid the rent and has not made application to dispute the notice.

Therefore, the landlord requested, and I find he is entitled to, an Order of Possession in support of the Notice to End Tenancy to take effect at 1 p.m. on January 31, 2009.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, NSF fee and filing fee and authorization to retain the security deposit in set off as follows:

November rent shortfall	\$ 500.00
December rent	2,000.00
January rent	2,000.00
Filing fee	50.00
NSF fee	25.00
Sub total	\$4,575.00
Less retained security deposit	- 1,000.00
Less interest	- 8.77
TOTAL	\$3,566.23

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on January 31, 2009 and a Monetary Order for \$3,566.23.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

January 27, 2009

Dispute Resolution Officer